

Aug-13-10 10:57am From-

T-261 P.02/03 F-349

LEVENFELD PEARLSTEIN
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CHICAGO OFFICE

August 13, 2003

630-434-5493
VIA FACSIMILEEnza I. Petrarca
Village Attorney
Village of Downers Grove
801 Burlington Ave.
Downers Grove, IL 60515

Re: DuPage Groundwater Site/Connections Due to Contamination

Dear Ms. Petrarca:

This relates solely to paragraph 11 of the Water Service Agreement distributed yesterday to various residents impacted by contamination from the Ellsworth Industrial Park. On behalf of my clients, we request that Downers Grove remove the provision. It is against public policy and otherwise illegal as it forces the residents to forego independent rights to recover their damages as a condition to obtaining clean water.

As you undoubtedly know, for at least two years, many residents in the impacted area have expended significant amounts of their own money for, among other things, bottled water, water filtration systems, and fans to disburse contaminants while showering. Additionally, Downers Grove has stated that each household must pay an additional connection cost of at least \$2,000. The residents will also have to pay monthly water bills due to the contamination. Neither the polluters, nor any public entity is paying these costs. Moreover, it is entirely possible that the funds provided by the polluters, along with government grants, will not even pay for the infrastructure for the water connections. The damages suffered by the residents are substantial, and have been caused solely by the pollution caused by the Ellsworth Industrial Park companies identified by the EPA.

Under paragraph 11 of the draft agreement, the Village is forcing the residents to waive certain claims. The polluters will argue that this waiver includes all of the above-mentioned damages, which they will assert are neither common law property nor personal injury damages. Additionally under the draft agreement, the residents will have to forego all claims under any federal or state statute, including RCRA and CERCLA.

EPA Region 5 Records Ctr.



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In all discussions with all agencies, including the U.S. EPA, the Illinois EPA and local government bodies, each has stated that any agreement to partially pay for the connections will not impact the residents' rights to recover their damages. The draft agreement is patently unfair and illegal. The Village should not be in the business of acting on the polluters' behalf in attempting to reduce their liability.

Please inform me if Downers Grove will delete paragraph 11. We are reviewing other portions of the Water Service Agreement and other documents and will have comments on these provisions at a future time.

Sincerely,



James D. Brusslan

JDB/lk

The Owner(s) on behalf of all owners and occupants of the Property, waives and releases the Village, the County of DuPage, and each of the participating companies providing funding for the water connection, from all claims pertaining to any such connection and/or groundwater contamination or condition, if any, except for any potential ~~common law~~ claims: (a) regarding personal (bodily) injury or property damage; (b) to seek recovery of the \$2000 Village connection charge; or (c) to seek recovery of costs incurred by Owner(s) prior to July 8, 2003, for alternative water supply.